THE KINGS Grant of Privilege FOR SOLE PRINTING Common-Lavv-Books; DEFENDED; AND THE Legality thereof ASSERTED.

LONDON, Printed by John Streater, 1669

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THE KINGS Grant of PRIVILEDGE FOR Sole Printing *Common-Law-Books*, defended, &c.

THe principal Exception against the Grant of Priviledge before mentioned is the slander of a Monopoly; And the principall Foundation on which it stands supported and justified is the Kings Prerogative; and therefore those two matters, A Monopoly and the nature thereof; and the Kings Prerogative and the Extent thereof are necessarily to be first considered.

I consider a Monopoly as it is (or was) at the Common Law before the Stat. 21 Jac. the matter in question being of a Grant made before that Statute; and the thing granted Excepted out of that Statute.

'Tis true, A Monopoly is (as many other ungrateful terms are) taken primarily and generally in the worst sence, to signifie something unlawful, against the Freedome of Trade, the Liberty of the Subject &c. And the word is thereupon also forced and extended (beyond its literal signification) to comprehend every sole dealing or exercising of

that which others are restrained to use. And to be termed a Monopoly, is at this day an imputation, as if the unlawfulness thereof were necessarily to be presumed and implyed. Whereas it is most clear, That All Monopolies are not against Law, some being reasonable, useful and beneficial to the Publick, and some necessary; and this Necessity and Benefit to the People recompenceth the restraint of their Liberty, and taketh away the unlawfulness thereof. All Patents of Priviledge for the sole usage of new inventions are Monopolies undeniably, yet is it necessary they should be granted for the encouragement of Industry and Invention; The communicating whereof to publick use, is a publick and general benefit, though the making the Invention should be perpetually appropriated to the Inventor. All or most of the Ancient Offices were at the first (and are agreed to be) direct and plain Monopolies in their natures, and are now found so to be in their mischievous consequence to the generality of the people, whose charges do but enrich a single person sometimes for performing that which is needless; or if needful, might be performed by the persons concerned themselves without charge. Nevertheless, such Offices having been created originally upon reason of Use and Benefit to the Publick, for encouragement of Learning, Diligence or Fidelity, or such like Motives to His Majesties Royal Predecessors by whom they were erected, have from Age to Age been approved and continued as they now are, (and are excepted by name with this Privilege in question out of the afore-

aforesaid Stat. 21 Jac.) as unquestionably lawful.

It hath been said, That Ancient Offices are established and made Lawfull by Time and Custome, which is part of the LAW. To which I answer, That a Monopoly is an Evill of that nature as could not be justified by Custome, or by length of Time, if it were not ex rationabili causa usitata, a benefit to the People in recompence of the restraint of their Freedoms: For 'tis the reasonableness of Benefit that justifies the thing, and not Time or Custome; In Consuetudinibus consideranda est soliditas rationis, non diuturnitas temporis. In like manner a man may by Usage or Reservation claim the Sole Priviledg of keeping a common Mill, a common Bake-house or Brew-house within a certain Precinct; For this may have commenced originally ex rationabili causa, by bargain or agreement to be made at the Owners charge, and for the Inhabitants ease and benefit, which is a recompence for the restraint of their liberty of using the like.

2 E. 3. 7. The Case there is, That the King had granted a Charter of Priviledge to the Lord or Owner of a Haven, that such Ships as Anchored or entred there for Harbour, should unlade there only. This and the precedent Cases are plain Monopolies; yet because they stand upon equivalent benefit, and the Ships had harbour and safety from the Lord of the Haven, 'twas therefore allowed a lawful Charter.

From which Cases I infer, That before the Statute

tute a Monopoly might be lawfully erected, because it might be beneficial to the Publick, and was permitted in special Cases. And with this agreeth the Learned Grotius in his Book de Jure Belli & Pacis. Monopolia non omnia cum jure naturæ pugnant, nam possunt interdum à summa potestate permitti justa de causa, &c. And he instances the practice and permission thereof in the Roman State, (the pattern of Governments) and the Holy Story of Joseph touching this matter. A Monopoly is then unlawful, when thereby the People are restrained in their Lawfull Trades, or in the exercise of what they have right to use, without general benefit or recompence for the same: but the privileging particular persons to exercise a particular Imployment which others never did use, nor have right to use, and the generall use whereof would be dangerous, and the Restraint of the use safe for the Publick, cannot be unlawful; for the reason of that unlawfulness fails, cessante ratione Legis cessat Lex.

Lib. 2. cap. 12. Parag. 16.

Now for the Prerogative (which is a copious subject) I shall only mention so much touching the same, as I conceive most proper to the matter in hand. The King hath Prerogatives of severall natures, and grounded upon severall Reasons; Some in respect of his own Royal Estate and Person; Others in respect of his Office and Magistracy, for the better Government of his People: For the King as Supream Magistrate hath a general Trust and Care of the Peoples safety, to prevent, as well as to deliver from publick Evils. Rex &c. ratione dignitatis Regiæ ad providendum salvationem

Reg. 127.

non Regni circumquaq; est astrictus. Now Providentia is (properly) futurorum; whereby the King is to use all means to foresee and prevent mischiefs within his Kingdom. For this purpose, and for the enabling him to perform this Office and Trust, he is by Law endowed with several transcendent Prerogatives, some known, and some unlimited and unknown which are jura summi Magistratus, as great for weight, and as infinite for number as the contingencies may be wherewith the Peoples safety may be affected.

The Extent of the Kings Prerogatives, such as concern their own personal rights, or the rights of their Estate, are sometimes disputed, and have sometimes been limited and restrained by their own consents in Parliament. But those touching the preservation of the publick have never been limited, nor ought to be disputed or lessned; and if so, the intended limitations and restraints thereof have been adjudged void because these Prerogatives are inseparable from the Crown.

Hence it is, The King can dispence with Laws, can pardon offences, can licence matters prohibited, can prohibit matters tolerated, and can priviledge, restrain, or qualifie new accidents, as he in Wisdome and Deliberation shall judge expedient and best for the Publick good. Which Judgment and Deliberation is peculiar and proper to the KING, who alone comprehendeth the Estate of publick things, and it is a duty and consequence of his Supream Magistracy. Now Printing in every mans reason

F. *Paul Servita* in his History of the Inqu. *pag.* 104.

reason and observation is, and in the Act for Regulating Printing is prefaced to be matter of Publick Care and great Concernment.

These things being premised, I shall only state the Case truly as it is to be understood touching the Priviledge in question, and then the Application will be obvious.

Anno 1466. In the Reign of King Hen. 6. the Art of Printing was first invented. And as some Manuscripts relate, the same King Hen. 6. purchased the first discovery of the Art, and thereby became Proprietor thereof at his own charge; Whereby the same came to be taught and used in England, but for the Printing of such matters onely as the King Licensed and Priviledged, and by the sworn Servants of the King onely, and in places appointed by the King, and not elsewhere.

This appears by a Manuscript thereof in the Library at *Lambeth*.

By the later end of the Reign of H. 8. the Invention was come to some perfection, and several Books were then printed here cum Privilegio, and Others brought over printed from beyond the Seas; but being few in number, and the prices thereof excessive, the same was remedied by the Stat. 25 H. 8. cap. 15.

7 *E.* 6. The State at that time taking consideration of the growth of Printing, and the danger and consequences that might ensue to the King and People by Printing the Lawes of the Land, that thereby Errors and Seditions might be divulged and insinuated, and other mischiefs happen to affect the the people, thought fit thereupon to commit the Printing of the LAWES to the Care and Trust of some

ſome particular perſons whom the KING by Patent priviledged to print the ſame, with a Clauſe of Reſtraint to all others from preſuming to meddle therein.

All ſucceeding Kings and Queens of this Realm have upon like Conſiderations mentioned in their Grants, and other Conſiderations of State, in Wisdome thought fit to continue the ſaid Priviledg in the hands of ſome perſons in whom they confided, with like Clauſes of reſtraint as before. The dates and ſucceſſions of which Grants are as followeth.

The King granted a Patent of Sole Priviledge to Print Law-Books, to Tottell for 7. years, with reſtraint to others from preſuming to print his Lawes. 7 *E.6.*

The Queen renewed Tottells Grant for life. 1 *Eliz.*

The Queen granted like Patent of priviledg to Yetſweirt Clerk of her Signet, for 30 years. 20 *Eliz.*

The Queen granted a New Patent of like Priviledg to Weight and Norton for 30 years. 41 *Eliz.*

The King granted a New Patent of like Priviledg to John Moore Clerk of his Signet for 40 years; Which Patent is ſtill continuing. 15 *Jac.*

Theſe Priviledges ad Imprimendum ſolum, have continually been enjoyed according to the purport of the ſaid Grants; ſaving the interruption forced upon the Preſſe after 1642. in the times of the late Troubles, whereby Sedition and Treaſon came to be printed openly, and continued ſo to be till his Majeſties Reſtauration.

This is the first peaceable Age wherein the Kings Prerogative, in this matter of Printing the LAWES, was ever questioned, or the aforesaid Priviledges charged with the imputation of Monopolies. And whether they be Such Monopolies as are against Law, is the present question.

For the justifying the lawfulness of this Privilege, I offer the Reasons ensuing.

1. That the King hath as absolute Power to prevent Evils foreseen, as He hath to reform them which happen unforeseen. And I conceive it clear, as He may forbid the exercise of any Invention, which upon the Permission thereof shall prove or become a Nusance, or common mischief, So He may qualifie, or wholly prohibit the first use of it, out of a prospect of the mischief. Watchfulness and Carefulness are the Duties required of a good Prince; to watch, is, that He may prevent and obviate Dangers. Now experience hath discovered to us the Dangers and Mischiefs of the Liberty of Printing; And, though the excellency of the Invention cannot be denyed, yet, whoever will consider it, shall find, that Factions and Errors in matters of Religion, and principles of Treason and Rebellions in matters of State have been more insinuated and fomented by the Liberty of the Presse, then by any other single means. So it may seem a question (impartially considered) whether the Use of Printing recompenceth the mischief by the liberty and abuse thereof. Therefore the [a] Father observeth excellently well, The matter of Books seemeth to be a thing of small moment, because it

[a] *F. Paul Servita ubi supra, Pag. 106, 107.*

it treats of words; but through these words, come Opinions into the World, which cause Partialities, Seditions, and Wars: They are words, it is true, but such as in consequence, draw after them Hosts of Armed Men.

Now certainly, had the King at the first discovery of the Invention of Printing, foreseen the Use thereof a likely means of Disturbance to the peace of the Church or State (as the liberty and abuse thereof hath proved to both). It had been in the Kings power, for the Peace and Safety of both, to have prohibited the Use of Printing wholly.

2. As upon the Reason aforesaid, the King might at the first have refused to have received the Use of Printing at all into His Dominions, so much more reasonably might He restrain the general Liberty and Use thereof, not to extend to matters of State or Law, these being peculiarly within His Concerns, and of more apparent danger to the peace of the State. Some States have not suffered their Laws at all to be published or known. There might be policy in this, though it seems unjust; yet on the contrary, for a general Liberty to publish the Laws is neither honourable nor safe. The mean betwixt these extreams hath been practised by the Kings of this Realm, not to Restrain the printing of the Laws wholly (as They might have done) nor yet to give a General Liberty to every man for the doing thereof (which might prove unsafe) but to Priviledge Select Persons only to do the same, who might be answerable for Misdemeanors and Defects therein.

3. Though the Art of Printing was discovered sometime before the Reign of E. 6. from whom the first Patent of this Priviledge appears Granted, yet were the Presses all then Licenced by the King; And none, or no considerable Book of the Law was printed before that time, the Art not being come to perfection: So that the first Patent of this priviledge could not be pretended a Monopoly, or illegal, none then having the Trade, or Right of printing the Laws to be detrimented thereby.

4. The King having at the first beginning of Printing, by His lawful Prerogative, and upon just Reason placed this Priviledge of printing the Laws solely in the hands of particular persons, to prevent mischiefs which might ensue upon a general liberty given to print the Laws; and the said Priviledge being then not unlawful, because no restraint of any thing then practised or exercised, or which any one had right to exercise: and having ever since so continued, and the people generally neither intitled to the Right or Usage of printing the Laws, remains grantable as at the first by Vertue of the same Prerogative, and for the same ends, and with the same innocence from injuring any one.

5. Besides the Reasons before mentioned, (of security to the Kingdome, against Innovations, or false construction of the Laws, either by the designs of Authors, or mistake of Printers, which is worthy the Princes Care, and those He entrusts with the printing of the Laws to prevent) the

King

King hath (as I conceive) a peculiar Right and Property (not only in the Art and Invention of printing by purchase (as before hath been said) for in that I lay no great weight but) in the Laws themselves, and in the publishing thereof, which cannot be taken from Him, or assumed by any Subject without His leave. 'Tis true, the people have also a Right in the Laws (as they had before Printing was known) not to print them, but to receive the fruit of them from the Kings Hand. But the King is the Repository and Proprietor, and is entrusted with the Promulgation and Execution of the Laws.

There is Lex scripta & non scripta. The written Laws are Records, &c. which are Recorda & Brevia Domini Regis, and are reckoned inter Thesauraria Regis, as the chief and principal things wherein he hath property. But the unwritten Laws, which are grounded upon Custom and Reason, &c. are yet more properly the Kings then the other, for these are in his Brest. The written Law is reposited but in Arca or Thesauro Regis, but the Laws unwritten are in pectore Regis. In scrinio pectoris, saith Fortescue. From whence I infer, That these Laws and Records which are so peculiarly the Kings in property and dispensation, ought not to be published, or numbred, or interpreted but by Authority from Him; and the printing thereof is of the Kings free pleasure, and not the peoples Right, and consequently the privileging some to print the Law is the Kings Grace, and the restraining others from that Liberty not any wrong. 3. Inst. 71. Cap. 45.

6. If no material Reason could be offered in this Case, to assert the Kings Right in Granting this Priviledge, yet there want not Authorities to justify the same.

1. The constant usage and practise, without exception from the first settlement of Printing, as appears by the succession of Patents before mentioned.

44 *Eliz.* In the Argument of Darcy and Allens Case, One great Reason against that Patent, was, That the like had never been granted before. But here the like hath ever been granted, ever since the printing of the Laws, and the like (or any) Exception thereunto never heard of before.

2. The general Allowance of the Judges in the Argument of Darcy and Allens Case, where this Patent was cited as a President, and holden lawful, & necessary pur le peace & safety del Realm, *Nemine contradicente.*

Moores Rep. 673.

3. The Stat. 21 Jac. cap 3. was passed purposely to suppresse the then present, and to prevent the future granting of Monopolies, and yet expressly excepts Patents of priviledge for sole printing of Books with several branches of the Militia and Offices, and other like things of the highest concern to the Crown. And I cannot omit to observe, That this priviledge of printing is the first thing named in the Exception, as if the Parliament then had it first and principally in their Care; And that this Patent now in question was the same Patent then in force.

4. The

4. The Stat. 21 Jac. before mentioned, and also the Stat. 14 Car. 2. touching the Regulation of printing, provide for Patents of Priviledge for printing, Granted, or to be granted; which they would not have done, had they not approved and intended to encourage like Grants to be made. And also the last mentioned Stat. fol. 433. expressly prohibits under penalties printing or com-printing of such Books, the which any other hath sole priviledge to print by Letters Patents; which implies, the Parliament intended to support and establish such as lawfull; and it cannot be reasonably thought several Parliaments should so expressly provide for this priviledge of sole Printing, if they had not designed to secure it from the Censure of a Monopoly.

It hath been Objected, That this Patent hath the mischiefs of a Monopoly, for thereby the Patentee may enhaunce the prices of Law-Books; May print the Law-Books as defectively as he pleases, and may prise mens Labours at his own Rates, &c. 1. *Object.*

1. The prices of Books may (if occasion shall be) be regulated by the Chancellor, &c. per Stat. 25 H. 8. cap. 15. *Sol.*

2. Defective printing, or other abuses in or about the printing of the Laws, is a breach of Trust, and punishable in the Patentee, and a cause of forfeiture of his Patent, as mis-execution, or defective execution is a cause of forfeiture of an Office.

3. If these Objections were true, and could receive no Answer, the mischiefs pretended are not comparable to the benefits received, or the security which redounds

redounds to the Publick, by restraining the genral Liberty of printing the Laws.

2. *Object.* The words of the Patent are said to be too large and unreasonable, to privilege all Books concerning the Common Laws. For herein all manner of Books whatever are included, forasmuch as every Book more or less comprizeth something of the Common-Law.

Sol. This is an unreasonable construction of the words; for Books principally treating of another Subject, which in the proof, or proceeding thereunto, only mention some Maxims or principles of the Law, can only be said to contain in them some Chapter or Page (but cannot be termed Books) concerning the Law, the Law neither being their subject or design. Denominatio fumitur à Principali.

7. If this Patent touching the sole printing of the Laws should in this Age have the sentence of a Monopoly against Law, in consequence other Patents of privilege of like nature for sole printing of Books (that is to say) the Patents to the Kings Printers for printing Proclamations. The Patents for printing the Bible, Testament, Common-Prayer, &c. The Patents of both the *Universities* of this Kingdom in reference to Printing. The several Patents to the Company of Stationers for sole printing the Primer, Psalters, Singing Psalms, School-Books; and that of Almanacks, the words of which are, All and all manner of Almanacks, *In terminis* such as be the words of the Grant in question, and are all Privileges of the like nature and authority

authority (but of leſſe reaſon and uſe) muſt have the ſame fate to be overthrown therewith.

8. The uſage of other Neighbour Kingdomes and States, may in this matter enforce the reaſonableneſs of the like Uſage here. In France, Germany, Holland, &c. ſole priviledges of this Nature are uſually granted, and ſolemnly obſerved. The Forms whereof are to be ſeen before ſeveral Books printed within thoſe Kingdomes; to this effect, (*viz.*) Sancta Cæſarea Majeſtas diplomate ſuo ſanxit, ne quis præter A. B. C. D. intra ſacri Imperii Romani Regnorumque, &c. Fines, theſe and thoſe Books in toto vel in parte excudat, &c. ſub confiſcatione, &c.

In like manner, Ordinum *Hollandiæ, Weſtfriſiæque* ſingulari privilegio cautum eſt, ne quis præter A. B. & C. D. (theſe and thoſe Books) Imprimat &c. ſub confiſcatione, &c.

The Form of the French Kings Priviledges, recite his Prerogative, That no Book can be printed within his Dominions, Sans avoir ſur ceo nos Lettres à ce neceſſairs, That thereupon he does permit ſuch perſons to print ſuch Books in ſuch manner, &c. Fayſans d'offence à touts imprimeurs, &c. d'imprimer, &c: any of the ſaid Books beſides the perſons priviledged.

Now foraſmuch as the Kings of this Realm of England are not Reſtrained herein (in caſe they might ſo be) by any Statute ſince the Invention of printing, why ſhould They be conceived to have leſs Right and power to Grant like priviledges touching printing, then is practiſed by their Neighbour Prin-

ces upon the same Reasons of Law and State, for their Subjects safety. It being almost impossible for a Prince to rule the spirits and wills of his Subjects (since Printing came in Use) without restraining the Presse, which so evidently influences them to Evil or Good. I only add, That after the Long Parliament had (Anno 1641.) opened a Liberty to the Presse for their first Service, to insinuate and propagate Principles of Rebellion, they immediately found it necessary again to Restrain the same (Anno 1643.) for their own Security.

The sum of all which is,

1. That some Monopolies may be necessary and useful to the Publick, and consequently lawful,

2. That the King hath Prerogative to priviledge such, and is Judge of the matter.

3. That the Priviledge in question is such, and hath been so adjudged by the Kings Predecessors ever since the Reign of Edw. 6.

4. That there hath been a continued succession of Patents of the same priviledge ever since the printing of the Laws.

5. That experience hath discovered the Mischief of Liberty in printing the Laws.

6. That the King upon fore-sight hereof (much more upon experience) might Restrain the printing of the Laws wholly.

7. That the King hath a Property in the Laws, and 'tis His Grace, and not the peoples Right, to have them printed.

8. That like priviledges for sole printing of Books, are practised and used to be granted by all the

the Neighbour Princes and States where Printing is used.

9. That in Arguments of Law, this Priviledge hath been cited, and allowed lawful.

10. That several Statutes have excepted and preserved it as lawful. From all which it is (with submission) concluded to be so.

FINIS.